

form by any corporation (including one issued by a government or political subdivision) is excluded in determining your net earnings from self-employment, unless you are a dealer in stocks and securities and receive the interest in the course of your trade or business.

(c) If you hold stocks or securities for investment or speculation purposes, any dividends and interest you receive that are excludable under paragraphs (a) and (b) of this section are excluded in determining your net earnings from self-employment, whether or not you are a dealer in stocks and securities.

(d) A dealer in stocks or securities is a merchant with an established place of business who is regularly engaged in the business of purchasing stocks or securities and reselling them to customers. The dealer, as a merchant, buys stocks or securities and sells them to customers with a view to making a profit. Persons who buy and sell or hold stocks or securities for investment or speculation, regardless of whether the buying or selling constitutes a trade or business, are not dealers in stocks or securities.

[45 FR 20075, Mar. 25, 1980; 45 FR 25060, Apr. 14, 1980]

§ 404.1084 Gain or loss from disposition of property; capital assets; timber, coal, and iron ore; involuntary conversion.

(a) If you are engaged in a trade or business, you must, in determining your net earnings from self-employment, exclude any gain or loss—

(1) That is considered a gain or loss from the sale or exchange of a capital asset;

(2) From the cutting of timber or from the disposal of timber or coal, even if held primarily for sale to customers, if section 631 of the Code applies to the gain or loss;

(3) From the disposal of iron ore mined in the United States, even if held primarily for sale to customers, if section 631 of the Code applies to the gain or loss; and

(4) From the sale, exchange, involuntary conversion, or other disposition of property that is not—

(i) Stock in trade or other property of a kind which would properly be in-

cluded in inventory if on hand at the close of the taxable year; or

(ii) Property held primarily for sale to customers in the ordinary course of a trade or business;

(b) For purposes of paragraph (a)(4) of this section, it is immaterial whether a gain or loss is treated as a capital gain or as an ordinary gain or loss for purposes other than determining earnings from self-employment.

(c) For purposes of paragraph (a)(4) of this section—

(1) The term *involuntary conversion* means a compulsory or unintended change of property into other property or money as a result of such things as destruction, theft or seizure; and

(2) The term *other disposition* includes destruction or loss by fire, theft, storm, shipwreck, or other casualty, even though there is no change of the property into other property or money.

Example: During the taxable year 1976, A, who owns a grocery store, had a net profit of \$1,500 from the sale of groceries and a gain of \$350 from the sale of a refrigerator case. During the same year, he had a loss of \$2,000 as a result of damage by fire to the store building. In figuring taxable income for income tax purposes, all of these items are considered. In determining net earnings from self-employment, however, only the \$1,500 of profit derived from the sale of groceries is included. The \$350 gain and the \$2,000 loss are excluded.

§ 404.1085 Net operating loss deduction.

When determining your net earnings from self-employment, you disregard the deduction provided by section 172 of the Code that relates to net operating losses sustained in years other than the taxable year.

§ 404.1086 Community income.

If community property laws apply to income that an individual derives from a trade or business (other than a trade or business carried on by a partnership), the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of his

Social Security Administration

§ 404.1088

or her respective distributive share of the gross income and deductions.

[70 FR 41955, July 21, 2005]

§ 404.1087 Figuring partner's net earnings from self-employment for taxable year which ends as a result of death.

(a) *General.* In the case of a deceased partner whose taxable year ends because of death, the deceased partner's net earnings from self-employment includes the amount of his or her distributive share of partnership ordinary income or loss for the partnership's taxable year that is attributable to an interest in the partnership through the month of death.

(b) *Computation.* (1) The deceased partner's distributive share of partnership ordinary income or loss for the partnership taxable year in which death occurred is determined by applying the rules contained in paragraphs (d) and (f) of § 404.1081.

(2) The portion of the distributive share to be included in the deceased partner's net earnings from self-employment for his or her last taxable year is determined by treating the ordinary income or loss constituting the distributive share as having been realized or sustained ratably over the partnership taxable year during which the deceased partner had an interest in the partnership and during which the deceased partner's estate, or any other person succeeding by reason of the death to rights to his partnership interest, held an interest in the partnership.

(c) *Deceased partner's distributive share.* A deceased partner's distributive share includes the distributive share of the estate or of any other person succeeding to the interest of a deceased partner. It does not include any share attributable to a partnership interest that was not held by the deceased partner at the time of death. If a deceased partner's estate should acquire an interest in a partnership in addition to the interest to which it succeeded upon the death of the deceased partner, the amount of the distributive share attributable to the additional interest acquired by the estate is not included in computing the deceased partner's distributive share of the partnership's

ordinary income or loss for the partnership taxable year.

(d) *Options available to farmers.* In determining the applicability of the optional method of figuring net earnings from self-employment to a member of a farm partnership it is necessary to determine the partner's distributive share of partnership gross income or distributive share of income described in section 702(a)(8) of the Code.

§ 404.1088 Retirement payment to retired partners.

(a) *In general.* If you are a retired partner, in figuring your net earnings from self-employment you must exclude payments made to you on a periodic basis by a partnership on account of your retirement and which are to continue until your death. This exclusion applies only if the payments are made under a written plan which meets the requirements set out in 26 CFR 1.1402(a)-(17) and the conditions in paragraph (b) of this section are met. The necessary requirements and conditions must be met throughout the entire partnership's taxable year for the payments to be excluded so that either all or none of the payments are excluded.

(b) *Other conditions.* You must have been paid your full share of the partnership's capital before the close of the partnership's taxable year in which retirement payments are made. Also, no member of the partnership can have any financial obligations to you (in his or her capacity as a partner) except to make the retirement payments. Lastly, you cannot perform any services for the partnership in the partnership's taxable year which falls wholly or partially in your taxable year in which you receive the retirement payments.

Example: D, a partner in the DEF partnership, retired from the partnership as of December 31, 1976. The taxable year of both D and the partnership is the calendar year. During the partnership's taxable year ending December 31, 1977, D rendered no service to any trade or business carried on by the partnership. On or before December 31, 1977, all obligations (other than retirement payments under the plan) from the other partners to D were liquidated, and D's share of the capital of the partnership was paid to him. Retirement payments received by D under the partnership's plan in his taxable year ending